

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
June 6, 2005

**D046341        Cingular Wireless et al. v. Superior Court of San Diego County/Utility Consumers' Action Network et al.**

The petition is denied.

**D044734        Carnohan v. Home Depot U.S.A., Inc.**

The judgment is affirmed. Hope Depot is awarded costs on appeal. McConnell, P.J.;

We Concur: Benke, J., Nares, J.

**D045760        People v. Smith**

The judgment is affirmed. Nares, J.: We Concur; Benke, Acting P.J., McDonald, J.

**D046528        People v. Carter**

The denial of a petition for writ of habeas corpus is not appealable. The appeal is dismissed.

**D044385        Timmes v. Puzo**

The order is affirmed insofar as it concerns Timmes. It is reversed insofar as it concerns Peter, and the matter is remanded to the trial court for its entry of a new order deleting Peter's name. The parties are to bear their own costs on appeal. McConnell, P.J.; We Concur: Benke, J., Aaron, J.

**D045525        In re Jacob B., a Juvenile**

The judgment terminating parental rights is reversed. The matter is remanded to the juvenile court with directions to ensure that proper notice has been provided under the ICWA as to the Eastern Band of Cherokee Indians. The trial court shall ensure that the parents have the opportunity to contest the sufficiency of the ICWA notice sent to that tribe. If the court determines that, after receiving proper notice, the Eastern Band of Cherokee Indians has not intervened, the court shall reinstate the judgment. If the tribe intervenes, then further proceedings shall be had according to law. Aaron, J.;

We Concur: McIntyre, Acting P.J., O'Rourke, J.

**D045389        Conservatorship of the Person of Karen N.**

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., Irion, J.

**D042016        People v. Munoz**

Petition for rehearing denied.

**D045398        People v. Baltazar**

The petition for rehearing is denied.

**D046281        City of San Diego v. Superior Court of San Diego County/Hanson et al.**

For good cause shown, the Superior Court of San Diego County is ordered to show cause why the relief requested should not be granted. Absent object on or before June 17, 2005 the response on file will be deemed the return to the order to show cause. Petitioner may file a reply on or before July 1, 2005. Oral argument will be deemed waived absent a request on or before July 8, 2005. All proceedings in the trial court are stayed pending further order of this court.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
June 7, 2005

**D044615        Valencia v. Suros et al.**

We reverse the order denying Dr. Suros's petition to compel arbitration, and direct the court to enter an order granting the motion and compelling arbitration. Dr. Suros to recover costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

**D045206        In re David P., a Juvenile**

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D046135        Smith v. Children's Hospital**

Respondent's unopposed motion to dismiss the appeal is granted.

**D045975        In re Fabian Z., a Juvenile**

The appeal is dismissed. O'Rourke, J.; We Concur: McIntyre, Acting P.J., Aaron, J.

**D045836        In re Bailey S., a Juvenile**

The appeal is dismissed. Huffman, Acting P.J., We Concur: McDonald, J., O'Rourke, J.

**D045635        People v. Carter**

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

**D045748        In re Anthony L., a Juvenile**

The appeal is dismissed. Nares, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

**D045767        People v. Stevenson**

The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D046118        In re Richard O., a Juvenile**

The appeal is dismissed. Benke, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

**D045452        People v. Stevenson**

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Nares, J.

**D046185        Vanessa M. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Ernest M. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. No timely petition has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.

**D046345        The Wellington Group v. Superior Court of San Diego County/State of California**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
June 8, 2005

**D045216        People v. Mohsenian**

The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., Haller, J.

**D043633        Warsoff v. Markham**

**D043687        Markham v. Warsoff**

The pending appeal in Warsoff v. Markham (D043633) is consolidated with the pending appeal, Markham v. Warsoff (D043687), for disposition.

Appellant's request for the court to take judicial notice is granted.

**D043633        Warsoff v. Markham**

**D043687        Markham v. Warsoff**

(Consolidated) In case No. D043687, the judgment confirming the arbitration award is reversed. In case No. D043633, the judgment dismissing Warsoff's rescission action is reversed. Both matters are remanded to the trial court for further proceedings consistent with this opinion. Warsoff is entitled to his costs in both appeals. McIntyre, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D045419        People v. Krouse**

The judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., McIntyre, J.

**D044991        In re Michelle C.**

**D045491        In re Maria F. on Habeas Corpus**

The above-entitled cases are consolidated for disposition.

**D044553        Automotive Finance Corporation v. Cornejo**

Summary judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J.; McIntyre, J.

**D044038        People v. Johnson**

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Nares, J.

**D046089        Adamson v. The Regents of the University of California**

Plaintiff Darryl Adamson's appeal from the judgment entered on November 4, 2004 is dismissed as untimely under California Rules of Court, rules 2 and 3.

**D046477        Truesdale et al. v. Superior Court of San Diego County/Rancho Valley Builders Inc., et al.**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
June 9, 2005

**D045625        American Tissue Corporation et al. v. Workers' Compensation Appeals Board and David Sarabia**

The decision of the WCAB is annulled. The matter is remanded to the WCAB with directions to grant ATC's petition for reconsideration and dismiss Sarabia's claim as barred by the statute of limitations. Nares, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D046452        Reich v. Lozier**

Respondent's unopposed motion to dismiss the appeal is granted.

**D046500        Prescott v. Superior Court of San Diego County/People**

The petition is denied.

**D044211        Forensis Group Inc., et al. v. Frantz, Townsend & Foldenauer et al.**

Summary judgment is reversed and the order denying the motions to set aside the judgment is reversed for further proceedings consistent with the principles set forth in this opinion. CERTIFIED FOR PUBLICATION. Huffman, J.; We Concur: McConnell, P.J., Benke, J.

**D044733        Estate of Ruiz, Deceased**

The judgment is affirmed. HWI is entitled to recover its costs on appeal. CERTIFIED FOR PUBLICATION. McIntyre, J.; We Concur: McConnell, P.J., Benke, J.

**D045599        In re Z. N., a Juvenile**

The judgment terminating parental rights is reversed and the matter is remanded to the juvenile court with directions to order Agency to make proper inquiry and to comply with the notice provisions of ICWA, the relevant case law interpreting ICWA, and the views expressed in this opinion. If, after proper inquiry and notice, a tribe claims Z. is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, no response is received or no tribe claims that Z. is an Indian child, the judgments terminating parental rights shall be reinstated. Irion, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

**D043108        NAS Engineering & Construction, Inc. v. ARMCO, Inc.**

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.

**D046275        Interinsurance Exchange of The Automobile Club v. The Superior Court of San Diego County/Williams**

The petition is denied.

**D045505        In re Vanessa A., et al. Juveniles**

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
June 10, 2005

**D045612        Bryant v. Superior Court of Imperial County/People**

Let a writ issue directing the superior court to (1) vacate its order granting the People's motion to quash Bryant's third subpoena and to conduct a further hearing to determine issues of privacy, security and burden of production; and (2) vacate its order denying the *Pitchess* motion, and (a) conduct a further hearing to determine what records should be produced, and (b) conduct an in camera review of records thereafter produced. This decision will become final as to this court 10 days after it is filed. At that time, the stay issued by the court on February 17, 2005, will be vacated. Nares, J.; We Concur: Huffman, Acting P.J., Aaron, J.

**D043523        People v. Armitage**

The petition for rehearing is denied.

**D044037        People v. Gonzalez**

The judgment is affirmed. Haller, Acting P.J.; I Concur: O'Rourke, J.;  
I Concur In The Result: McDonald, J.

**D043979        Mabie et al v. Kaplan Higher Education Corporation et al**

The order is affirmed and we direct the trial court to grant judgment on the pleadings as to the UCL cause of action insofar as it purports to be a representative action. We also direct the court to grant Mabie leave to amend the UCL cause of action to give her the opportunity to seek class certification. The parties are to pay their own costs on appeal. McConnell, P.J.; We Concur: Aaron, J., Irion, J.

**D045314        People v. Moore**

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., Haller, J.

**D042704        People v. Kennell et al.**

Grlicky's judgment is affirmed. Kennell's sentence is vacated; in all other respects, Kennell's judgment is affirmed. Kennell's case is remanded to the trial court to conduct a new sentencing hearing consistent with the principles discussed in this opinion. McDonald, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D044680        Conservatorship of the Person of Mary H. a Conservatee.**

Judgment affirmed. Benke, Acting P.J.; I Concur: Huffman, J., I concur in the result: McDonald, J.

**D046354        Hilburn et al. v. Superior Court of San Diego County/Hilburn**

The petition is denied.